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Issue Date: 08 March 2004

CASE NO.: 2002-LHC-00297

OWCP NO.: 01-109724

In the Matter of

SILAS PARLIN
Claimant

v.

BATH IRON WORKS CORPORATION
Employer

and

BIRMINGHAM FIRE INSURANCE COMPANY/
AIG CLAIM SERVICE
Carrier

Appearances:

Marcia L. Cleveland, Topsham, Maine,
for the Claimant

Nelson J. Larkins (Preti, Flaherty, Beliveau, Pachios
& Haley), Portland, Maine for the Employer and Carrier

Before: Daniel F. Sutton
Administrative Law Judge

DECISION AND ORDER ON MODIFICATION AWARDING BENEFITS

I. Statement of the Case

In 1991, Silas Parlin (the "Claimant") filed a claim against the Bath Iron Works Corporation ("BIW") under the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, et seq. (the Act), for permanent total disability compensation for asthma which he alleged that he developed as a result of exposure to smoke, dust and fumes in the course of his employment as a welder at BIW. This case came before Administrative Law

Judge Jeffrey Tureck who dismissed the claim for compensation as untimely but awarded the Claimant medical benefits for his respiratory condition to be paid by the Birmingham Fire Insurance Company ("Birmingham Fire") as the responsible carrier for BIW. *Parlin v. Bath Iron Works*, Case No. 1992-LHC-1313 (June 24, 1993). On appeal, the Benefits Review Board reversed Judge Tureck's finding that the compensation claim was time-barred, and it remanded the case for further consideration. *Parlin v. Bath Iron Works Corp.*, BRB No. 93-2185 (May 15, 1996) (unpublished). On remand, Judge Tureck found that the Claimant had met his burden of establishing that he could not return to his usual work as a welder at BIW, but that he had been only partially disabled since July 1990 because he had secured alternate employment at an American Legion Hall, earning $150.00 per week. Decision and Order on Remand at 2. Consequently, he awarded the Claimant temporary total disability compensation until June 30, 1990 when he commenced alternate employment, and permanent partial disability compensation based on the difference between the Claimant's wages as a welder and his earnings from the American Legion job, from July 1, 1990 and continuing. Decision and Order on Remand at 3. The case is now back before the Office of Administrative Law Judges ("OALJ") on the Claimant's motion under section 22 of the Act to modify the award of permanent partial disability compensation to permanent total disability compensation.

Pursuant to notice, a formal hearing which was conducted before me in Portland, Maine on May 1, 2002 and June 25, 2002, at which time all parties were given the opportunity to present evidence and oral argument. The Claimant appeared at the hearing represented by counsel, and an appearance was made by counsel on behalf of BIW and Birmingham Fire. The Claimant and one other witness, Lawrence Dearborn who was called by the Claimant, testified at the hearing, and documentary evidence was admitted without objection as Claimant's Exhibits ("CX") 1-14 and BIW Exhibits ("EX") 1-25. Hearing Transcript ("TR") 12-13.[1] At the conclusion of the hearing, the record was held open for the parties to offer additional evidence and written closing argument. TR 98. Within the time allowed, Birmingham Fire offered the transcript of prior hearing conducted before Judge Tureck on July 14, 2002 (EX 26) and the transcript of the deposition of vocational expert Sharon Walsh taken on July 11, 2002 (EX 27). The Claimant objected to the admission of the hearing transcript, asserting that Birmingham Fire was attempting to relitigate issues decided in the prior proceeding. His attorney also objected that she had only recently received a copy of the transcript.[2] Birmingham Fire responded that testimony taken at the prior hearing is relevant to the current modification proceeding in which the Claimant is alternatively alleging that Judge Tureck's finding that his work for the American Legion established an earning capacity was based on a mistake of fact or that there had been a change in circumstances warranting modification. In an order issued on September 25, 2002, I overruled the Claimant's objections and admitted Birmingham Fire's post-hearing evidence as

[1] There was some confusion at the hearing regarding the numbering of the Claimant's exhibits which resulted in the April 3, 2002 deposition of Dermot Killian, M.D., which was admitted as CX 14, being inadvertently referred to as CX 15. TR 14.

[2] Although Attorney Cleveland had represented the Claimant at the hearing before Judge Tureck, she was associated with a different firm at that time, and the hearing transcript apparently was not included in the file that she obtained from her former firm.

EX 26 and EX 27. Thereafter, both parties submitted written closing argument, and the record is now closed.

Upon review of the evidence of record and the parties' arguments, I conclude that the Claimant has established entitlement to modification of the prior award of permanent partial disability compensation based on a showing of changed conditions in that the evidence now establishes that he is totally disabled. My findings of fact and conclusions of law are set forth below.

II. Findings of Fact and Conclusions of Law

A. Stipulations and Issues Presented

The parties have stipulated that: (1) the Claimant has occupational asthma which arose out of and in the course of his employment at BIW; (2) there was an employer-employee relationship between the Claimant and BIW at all relevant times; (3) there was timely notice of the injury; (4) notice of controversion was filed on August 21, 2001; (5) an informal conference on the modification claim was conducted on October 11, 2001; (6) medical benefits have been paid to the Claimant under section 7 of the Act; and (7) the applicable average weekly wage, as previously determined by Judge Tureck, is $496.00. TR 8-9. The sole issue presented involves the extent of the Claimant's disability after he commenced alternate employment with the American Legion and, specifically, whether he is entitled to modification of the prior award of permanent partial disability compensation on the ground that the prior finding of an earning capacity was based on a mistake of fact or because there has been a change in conditions. Birmingham Fire does not challenge its continuing liability as the responsible carrier. TR 9.

B. Background

The Claimant is currently 62 years old. He completed the seventh grade in school and obtained a GED while serving in the United States Army during the early 1960s. After his honorable discharge from the Army in 1965, he worked primarily as a welder and was hired by BIW as a welder in June 1978. While working at BIW, he developed neck and right shoulder problems which he attributed to overhead welding work. He also developed respiratory problems in 1988, sought medical treatment and was diagnosed with hyper-reactive airways disease or asthma. His treating doctor recommended that he not be exposed to respiratory irritants, including dust, smoke and fumes. BIW was not able to accommodate these restrictions, and the Claimant left his job at BIW on September 10, 1989. As discussed in greater detail below, his only employment after leaving BIW was part-time work for the American Legion. CX 4 (1992 Decision and Order) at 2-5; TR 45, 48-50, 57-58.

B. Prior Finding on the Extent of the Claimant's Disability

In his decision on remand from the BRB, Judge Tureck initially found that the Claimant had made a *prima facie* showing of total disability by establishing that he is unable to return to his usual employment as a welder because of the restrictions imposed by his work-related

respiratory condition. CX 4 at 2. Judge Tureck then turned to the question of whether BIW and Birmingham Fire had shown that suitable alternative employment is available:

> Once claimant establishes a *prima facie* case of total disability, the burden shifts to the employer to establish suitable alternative employment. Pointing to claimant's work as a part-time janitor at the American Legion Hall beginning in July of 1990, which was still ongoing at the time of the hearing, employer argues that claimant's disability is only partial because work is available to him within his limitations. However, claimant testified that he is exposed to dust, smoke and ashes in this job (TR 29-30, 40), which is contrary to the work restrictions imposed by Dr. Caldwell (CX 21, at 1) and Dr. Hess (CX 23, at 27-28). Nevertheless, he continues to work at the American Legion Hall because he needs the income of about $150.00 a week (TR 29).
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> In limited circumstances, a claimant may be found to be permanently totally disabled despite the fact that he is working. For example, if the claimant works despite excruciating pain (*e.g., Haughton Elevator Co. v. Lewis*, 572 F.2d 447, 450 (4th Cir. 1978) (Winters, concurring)), or he works in sheltered employment (*e.g., CNA insurance Co. v. Legrow*, 935 F.2d 430, 24 BRBS 202 (CRT) (1st Cir. 1991)), his job may be found not to be suitable employment. However, there is nothing to suggest that any special circumstances are applicable in this instance. Claimant has not contended he is physically incapable of performing his work for the American Legion, nor has he indicated that he is any more than "bothered" by the irritants to which he is exposed; and although the claimant states that he is exposed to dust, smoke and ashes in this janitorial position, there is no indication that this exposure is excessive, or approaches the degree of such exposure experienced as a welder (*see* CX 17, at 33-34;. TR 29-30, 40). In addition, that he was able to do this work for two years at the time of the hearing, and presumably was going to continue in that capacity, is strong indication that claimant is capable of performing this work despite the fact that he may experience occasional discomfort. Finally, this job does not appear to be one involving his employer's beneficence, since the job duties clearly are necessary and claimant testified that he bids for the janitorial contract and would lose the contract if he is underbid (CX 17, at 33).

Id. at 2 (citations in original). Based on these findings, Judge Tureck concluded that the Claimant's disability since July 1990 when he commenced work in the Legion Hall was partial and that he had a wage-earning capacity of $150.00 per week. Subtracting this wage-earning capacity from the Claimant's average weekly wage of $496.00, Judge Tureck awarded the Claimant permanent partial disability compensation starting on July 1, 1990 based on a weekly loss of wage-earning capacity of $346.00. *Id.* Neither party appealed the decision and order on remand.

C. Motion for Modification.

Section 22 of the Act permits any party-in-interest to request modification of a compensation award within one year of the last payment of compensation or rejection of a claim on grounds that there has been a change in conditions or a mistake in a determination of fact. 33 U.S.C. § 922. The Claimant seeks to modify the award of permanent partial disability compensation, arguing that relief is warranted to correct a mistake of fact and because there has been a change in conditions. Birmingham Fire opposes the requested modification.

1. Mistake of Fact

The Claimant first argues that Judge Tureck mistakenly found that the job at the American Legion Hall established that he has an earning capacity. In support of this argument, he testified at the most recent hearing that he has trouble reading and needed help from family members to perform the duties of this job, and he asserts that Judge Tureck was unaware of these facts. Claimant's Brief at 4-5. He also elicited testimony from Mr. Dearborn, a friend and brother Legionnaire, regarding the circumstances of his hiring, and he contends that Mr. Dearborn's testimony establishes, contrary to Judge Tureck's finding, that his American Legion job was the creation of a beneficent employer and should not count as evidence of an earning capacity. *Id*. at 5-6.

The Supreme Court has held that section 22 provides broad discretion to correct mistakes of fact, whether they are demonstrated by wholly new evidence, cumulative evidence, or merely by further reflection on the evidence initially submitted. *O'Keefe v. Aerojet-General Shipyards*, 404 U.S. 254, 255-56 (1971). *See also Bath Iron Works Corp v. Director, OWCP*, 244 F.3d 222, 227 (1st Cir. 2001). Although section 22 has been broadly interpreted as a vehicle for ensuring that the interests of justice are served, it does not provide parties with an unlimited opportunity to reopen a prior award or denial whenever they find themselves dissatisfied with the outcome of prior litigation. Rather, the need to render justice must be balanced against the need for finality in decision-making. *General Dynamics Corp. v. Director, OWCP*, 673 F.2d 23, 25 (1st Cir. 1982). Thus, "an allegation of mistake should not be allowed to become a back door route to re-trying a case because one party thinks he can make a better showing on the second attempt . . . [t]he congressional purpose in passing the law would be thwarted by any lightly considered reopening at the behest of an employer who, right or wrong, could have presented his side of the case at the first hearing and who, if right, could have thereby saved all parties a considerable amount of expense and protracted litigation." *McCord v. Cephas*, 532 F.2d 1377, 1380-81 (D.C. Cir. 1976), quoting in part 3 Larson, Workmen's Compensation Law, § 81.52. In my view, the Claimant's mistake argument clearly represents an improper attempt to relitigate an issue, the suitability of the American Legion job, that he had a full and fair opportunity to address before Judge Tureck. Significantly, there has been no showing that the evidence on which he now relies to demonstrate a mistake was not available at the time of the prior hearing. *Cf. Delay v. Jones Washington Stevedoring*, 31 BRBS 197, 204-205 (1998) (error for ALJ to exclude evidence in a modification proceeding that was not previously available). Since the Claimant has not shown that the evidence of his reading deficiencies, need for assistance in performing the American Legion job and beneficence of the American Legion could not have been introduced at the hearing before Judge Tureck, or that the necessity of introducing this evidence could not have

been reasonably anticipated, I conclude that he may not invoke section 22's modification procedures to attack the prior determination that the American Legion job was suitable and establishes an earning capacity. *See Kinlaw v. Stevens Shipping and Terminal Co*., 33 BRBS 68, 73-74 (1999); *Lombardi v. Universal Maritime*, 32 BRBS 83, 86-87 (1998).

2. Change in Conditions

When a party seeks modification based on a change in condition, an initial determination must be made as to whether the moving party has met the threshold requirement for modification by offering evidence demonstrating that there has been a change in the claimant's condition. *Jensen v. Weeks Marine, Inc.*, 34 BRBS 147, 149 (2000) (*Jensen II*). The requisite change can be to either the claimant's physical or economic condition. *Metropolitan Stevedore Co. v. Rambo*, 515 U.S. 291, 301 (1995) (holding that "a disability award may be modified under § 22 where there is a change in the employee's wage-earning capacity, even without any change in the employee's physical condition.").

The Claimant clearly meets the threshold requirement for modification. At the modification hearing, he testified that he was no longer working at the American Legion and had not worked there since July 31, 1993 when he resigned from his custodial position because the dust and cigarette smoke there exacerbated his asthma. TR 39; CX 5. The Claimant's reason for leaving the American Legion job is corroborated by his treating physiciant, Dermot N. Killian, M.D. who testified that the Claimant has lifetime restrictions against exposure to dusty or smoky environments, chemicals and closed-in areas with respiratory irritants. CX 14 at 10. The Claimant has not worked anywhere since July 1993 and has not looked for work because he was unsuccessful in finding any work, other than the American Legion job, after he left BIW in 1989. TR 43-45, 50. He has applied for and been awarded Social Security disability benefits. TR 72. He also underwent surgery in April 1998 to repair a herniated lumbar disc, and he is restricted to lifting no more than 25 pounds. CX 11(o); TR 54-56. He also has been diagnosed with a heart murmur and aortic stenosis. TR 58. However, he continues to hunt, ice fish, cut a small lawn with a riding mower and plow snow with his pickup truck, and he has been able to drive as far as Rhode Island to visit relatives. TR 52, 63-68, 70-71. On these facts, which have not been contradicted by the Birmingham Fire, I find that the Claimant has established that there has been a change in his economic condition.

Since the Claimant has met his initial burden of demonstrating a basis for modification, the inquiry now returns to the same standards for determining the extent of disability as were applied in the initial proceeding. *Jensen II*, 34 BRBS at 149. As discussed above, it was previously determined that the Claimant cannot return to his usual employment as a welder at BIW. Dr. Killian testified that it is highly improbable that the Claimant could tolerate even mild to moderate airway irritant exposure if he attempted to return to work as a welder; CX 14 at 8; and Birmingham Fire has offered no evidence to the contrary. Since the Claimant has established that he is unable to return to his usual employment, the burden shifts to Birmingham Fire to show that suitable alternative employment is readily available in the Claimant's community for individuals with the same age, experience, and education. To meet this burden, Birmingham Fire must prove that "there exists a reasonable likelihood, given the claimant's age, education, and background, that he would be hired if he diligently sought the job." *CNA Ins. Co.*

v. Legrow, 935 F.2d 430, 434 (1st Cir. 1991), quoting *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031, 1042-1043 (5th Cir. 1981).[3]

In an effort to meet its burden of establishing the existence of suitable alternative employment, Birmingham Fire introduced a labor market survey dated March 25, 2002 from Sharon Walsh, a certified rehabilitation counselor. EX 25. In her survey report, Ms. Walsh stated that she reviewed the Claimant's medical records, education and work history. From this information, she assumed that the Claimant is restricted from working around dust, fumes or smoke, and she additionally noted that he has a history of cervical and shoulder problems which typically would require that he avoid overhead work. *Id.* at 1.[4] She then identified 28 jobs from classified newspaper advertisements and 13 jobs through a "Career Center" which she determined to be suitable for the Claimant. *Id.* at 1-8. Based on her labor market survey, Ms. Walsh concluded that the Claimant had a current earning capacity between $8.00 and $10.00 per hour, and she stated that he should be able to earn at least $8.50 per hour given his work history, skills and maturity, and possibly as much as $10.00 per hour if he were hired for one of the many sales and telemarketing positions identified in the survey. *Id.* at 9. She further wrote that it is her opinion that there is and has for many years been a strong, stable labor market for the Claimant, and she attached a chart of unemployment rates dating back to 1994 as support for her opinion. *Id.*

At a post-hearing deposition, Ms. Walsh testified that she located the jobs cited in the labor market survey in newspapers and in through the State of Maine Job Service "Job Bank" which was formerly known as The Career Center. EX 27 at 9-10. She stated that the Claimant's experience as a welder was not "all that important" because she was not looking for welding or fabrication jobs, and she stated that she was not aware of the Claimant's reading problems. *Id.* at 12. Ms. Walsh stated that took the Claimant's restrictions against working in environments with dust or fumes, as well as his history of cervical problems which limit his ability to do a lot of overhead work. *Id.* at 14. She then discussed some of the jobs in her survey such as vending route driving positions and cashiers in Big Apple convenience stores and service stations which she described as offering a clean environment and not "overly physically challenging." *Id.* at 15. She also stated that all of the jobs in her survey were considered entry level, and there are no jobs listed that would require skills that the Claimant does not possess. *Id.* at 16-17. She then

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[3] In view of the Claimant's limited education and work experience, I find that Birmingham Fire must demonstrate the availability of actual jobs that the Claimant could realistically perform in order to carry its burden in this case. *Cf. Air America, Inc. v. Director, OWCP*, 597 F.2d 773, 779 (1979) (rejecting "a mechanical rule . . . that the employer must always demonstrate the availability of an actual job opportunity whenever a claimant shows an inability to perform his previous work . . . [r]ather it is reasonable to require the employer to make such a strong showing when a claimant's inability to perform any available work seems probable, in light of claimant's physical condition and other circumstances such as claimant's age, education, and work experience . . . [but not] [w]here claimant's medical impairment affects only a specialized skill that is necessary in his former employment . . .").

[4] The Claimant testified at the hearing that his neck and shoulder problems were caused by doing overhead welding work. TR 56-57.

described other jobs in the survey such as sales coordinator in a sporting goods store, local delivery driver, vacuum cleaner sales, hotel front desk clerk, retail store cashier, security guard, driver and maintenance for a retirement community, retail store demonstrator, and retail store loss prevention. *Id.* at 17-23. Ms. Walsh further testified that the unemployment rate in Maine has been below the national average for a number of years. *Id.* at 25. She did acknowledge that unemployment rates were significantly higher during the mid-1990s but said that security positions are always available and that many of the other positions in her survey are "not all that affected by the unemployment rate." *Id.* at 28-29. Ms. Walsh said that the minimum wage in Maine was $5.75 per hour in 2002, but it has been her experience that employers rarely offer starting wages below $6.00 per hour. *Id.* at 25. She stated that she is "very confident" that the Claimant would be successful in obtaining a job, even with his limited reading skills, and she stated that many of the jobs listed in her survey require no more than a sixth grade reading level which she described as the ability to read a newspaper. *Id.* at 26-27. In conclusion, Ms. Walsh reiterated her opinion that she is "very confident" that the Claimant could have found a job paying at least $150.00 per week if he had diligently tried, and she stated that his age would not be a problem in obtaining the type of jobs listed in her survey. *Id.* at 32-33.

On cross-examination by the Claimant's attorney, Ms. Walsh testified that she had never met or spoken to the Claimant, that she had never tested him or reviewed the results of any testing, and that she had not attended the hearing or read the Claimant's testimony in the hearing transcript. *Id.* at 32-34, 37. She stated that she did not know where the cashier jobs in Big Apple stores were located, explaining that advertisements simply gave a toll free number, but she assumed that the positions were in the local area. *Id.* at 37-38. She said that she had called most of the employers in section 2 of her survey, but she was not able to contact anyone at Big Apple or the employers listed for job numbers 5, 6 and 7. *Id.* at 38-39. She did not speak to any of the employers listed in section 3 of the study, and she did not discuss the Claimant with any of the employers that she did contact. *Id.* at 39.

At first glance, Ms. Walsh's labor market survey appears to identify several jobs that would be suitable for the Claimant. However, her admission that she was unaware of the Claimant's reading deficiencies, in combination with the fact that she never spoke to the Claimant or tested his cognitive abilities, raises a serious question as to whether she possessed sufficient information to render a reliable expert opinion on his employability. At best, her testimony at the deposition suggests that the Claimant's reading deficiencies and weak communication skills make him a borderline candidate for even the least sophisticated positions in her survey, and her omission of any discussion of the Claimant in her discussions with prospective employers increases the uncertainty as to whether any of the listed positions are suitable and whether there is a reasonable likelihood that he would be hired. Adding to these doubts is the evidence introduced by the Employer that the Claimant has three DUI convictions (EX 13 at 44) and Ms. Walsh's failure to address what impact his criminal record would have on his ability to obtain any of the jobs listed in the survey which are predominantly in fields involving driving or security where it is reasonable to expect that a history of multiple DUI convictions would pose a significant impediment to employment. Given these unanswered questions, I find that Birmingham Fire has not on this record met its burden of demonstrating that there is a reasonable likelihood, given the Claimant's age, education, and background, that he would be hired for any of the cited jobs if he diligently sought employment. Since

Birmingham Fire has not shown that suitable alternative employment exists, the Claimant is entitled to a finding of total disability.

D. Compensation Due, Interest and Credits

As compensation for his permanent total disability from August 1, 1993 to the present, the Claimant is entitled to payments equal to sixty six and two-thirds of his average weekly wage of $496.00 which equates to $330.67 per week. 33 U.S.C. § 908(a). Interest is due on all unpaid compensation. *Adams v. Newport News Shipbuilding & Dry Dock Co*., 22 BRBS 78, 84 (1989); *Byrum v. Newport News Shipbuilding & Dry Dock Co*., 14 BRBS 833, 837 (1982). The appropriate interest rate is the rate employed by the United States District Courts under 28 U.S.C. § 1961 (1982) which is periodically changed to reflect the yield on United States Treasury Bills. *Grant v. Portland Stevedoring Company*, 16 BRBS 267, 270 (1984), modified on reconsideration, 17 BRBS 20 (1985). My order incorporates 28 U.S.C. § 1961 (1982) by reference and provides for its specific administrative application by the District Director. The applicable interest rate shall be determined as of the filing date of this Decision and Order with the District Director. Finally, Birmingham Fire is entitled to a credit in the amount of its prior compensation payments pursuant to section 14(j) of the Act. *Balzer v. General Dynamics Corp*., 22 BRBS 447, 451 (1989), *aff'd on reconsideration*, 23 BRBS 241 (1990); *Nichols v. Sun Shipbuilding & Dry Dock Co*., 8 BRBS 710, 712 (1978).

E. Attorney's Fees

Because he has successfully established his right to modification of the compensation order, the Claimant is entitled to an award of attorney's fees under section 28(a) of the Act. *See Lebel v. Bath Iron Works*, 544 F.2d 1112, 1113 (1st Cir. 1976). The Claimant's attorney has filed an itemized application for attorney's fees and costs for work performed before the Office of Administrative Law Judges in the amounts of $5,887.50 and $637.80, respectively, for a total of $6,525.30. Birmingham Fire objects to three entries: (1) duplicate charges of $18.75 on November 20, 2001 and December 13, 2001 for reviewing a LS-18; (2) a telephone conference on March 27, 2002 relating to a settlement which was not consummated; and (3) a charge on September 23, 2003 for attending an informal conference. In response, the Claimant's attorney agrees to delete one of the $18.75 charges for reviewing the LS-18, and she agrees that there was no informal conference on September 23, 2003 and that fees for attending the informal conference must in any event be submitted to the District Director. With regard to the settlement discussion, the Claimant's attorney argues that denying compensation for pursuing a settlement is not supported by case law or logic. I agree. Upon review, I find that the fee application complies with the requirements of 20 C.F.R. §702.132(a) and that the fees and costs requested, with the exception of the duplicate $18.75 charge for reviewing the LS-18 and the $573.50 billed for attending the informal conference, are reasonably commensurate with the necessary work done, taking into account the quality of representation, the complexity of the legal issues involved and the amount of benefits awarded. Accordingly, Birmingham Fire will be ordered to pay the Claimant's attorney a fee in the amount of $5,933.05.

III. Order

Based upon the foregoing Findings of Fact and Conclusions of Law and upon the entire record, the Claimant's request for modification of the prior compensation order is GRANTED, and the following order is entered:

(1) Birmingham Fire Insurance Company, as the responsible carrier for the Bath Iron Works Corporation, shall pay to the Claimant, Silas Parlin, permanent total disability compensation pursuant to 33 U.S.C. § 908(a), plus the applicable annual adjustments provided in 33 U.S.C. § 910, at the rate of $330.67 per week commencing August 1, 1993 and continuing until further order;

(2) Birmingham Fire Insurance Company shall pay to the Claimant interest on all past due compensation at the Treasury Bill rate applicable under 28 U.S.C. § 1961 (1982), computed from the date each payment was originally due until paid;

(3) Birmingham Fire Insurance Company shall be allowed a credit pursuant to 33 U.S.C. § 914(j) in the amount of its past payments of permanent partial disability compensation since August 1, 1993;

(4) Birmingham Fire Insurance Company shall pay to the Claimant's attorney, Marcia J. Cleveland, L.L.C., attorney's fees and costs in the amount of $5,933.05; and

(5) All computations of benefits and other calculations provided for in this Order are subject to verification and adjustment by the District Director.

SO ORDERED.

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DANIEL F. SUTTON
Administrative Law Judge